General nearest to the place of employment from which the workman was dismissed.

(2) Upon receipt of the representations the Director General shall take such steps as he may consider necessary or expedient so that an expeditious settlement thereof is arrived at within a period of not more than thirty days from the date of receipt of the representations. Where the Director General is satisfied that there is no likelihood of the representations being settled within the said period of thirty days or where the representations remain unsettled at the end of the said period of thirty days the Director General shall notify the Minister accordingly.

(3) Upon receiving the notification of the Director General under subsection (2), the Minister may, if he thinks fit, refer the representations to the court for an award."

The application for an order of *certiorari* is being made on grounds of breach of natural justice and excess of jurisdiction on the part of the Minister. It becomes necessary, therefore, for the court to have all the facts at its disposal which led the Minister to make the reference to the Industrial Court. In this context, the Director of Industrial Relations (Selangor & Pahang), the Director-General of Industrial Relations and the Minister were all exercising quasi-judicial functions in a dispute between two subjects. There is nothing in the proceedings under section 20 that could involve State secrets or national policy. The report of the Regional Director could only contain the statement of facts as put forward by each side and the steps taken at conciliation. The Report of the Director-General to the Minister could only be his reasons for being satisfied that a settlement could not be reached within 30 days. Merely because the Minister exercised functions under the Act does not make the matter an affair of State. For these reasons, I held that reports under section 20(2) of the Industrial Relations Act are not official records relating to affairs of State within the meaning of section 123 of the Evidence Act.

Reference was made to section 54(2) of the Act which reads:

"In a proceeding before the court on a reference to the court under section 20(3), no evidence shall be given of any proceeding before the Director General under section 20(2) other than a written statement in relation thereto agreed to and signed by the parties to the reference."

"The Court" in this section means the Industrial Court. Conciliation proceedings are held on a without prejudice basis and the parties may have agreed to settle on certain conditions. Failing settlement, the dispute is revived again and the Industrial Court hears the evidence afresh. The exclusion of evidence of the proceedings under section 20(2) is to avoid prejudice in the mind of the Industrial Court against either party. These considerations do not apply to the High Court in hearing an application for an order of *certiorari* and indeed section 54(2) is of very limited application viz.: to proceedings before the Industrial Court under section 20(3).

In this court the issues are different. Was it right for the third respondent to make the representation under section 20(1) and if so was this a proper case for the Minister to refer the matter to the Industrial Court. To enable this court to make a decision, it must know whether the provisions of section 20 have been complied with and this it may only do with a full disclosure of the events that have happened leading up to this application.

For these reasons, I ordered that the second respondent produce the two reports referred to in the *subpoena duces tecum.*

Order accordingly.

Solicitors: *Shook Lin & Bok; Shearn, Delamore & Co.*

A.J.A. PETER v. O.G. NIO & ORS.

[O.C.J. (Abdul Hamid J.) March 21, 1979]

[Kuala Lumpur — Civil Suit No. 238 of 1971]

Tort — Libel — Identification — Whether article referred to plaintiff — Tests to be applied — Resignation of agent of insurance company — Letters sent to policy-holders — Leaflet relating to "Twisters" enclosed — Letters sent to further interest of company — Damages.

In this case the plaintiff was an agency supervisor of an insurance company, the third defendant. The first defendant was also an agency supervisor of the company and the second defendant was the Vice-President of the Company. The plaintiff claimed damages for libel in respect of (a) an article appearing in the official publication of the company, the "Pacemaker"; (b) a letter sent by the second defendant to an agency of the company; (c) a letter sent by the first and third defendants to policy-holders of the company.

Held: (1) the article was such as would lead those who were dealing with the plaintiff to the conclusion that the article referred to him and that the defamatory words used were referable to the plaintiff and were so used with the intention of identifying him;

(2) the plaintiff has failed to prove his case in respect of the letters sent to the agent and policy-holders of the company. The letters were published primarily to protect the company's interest with no intention whatsoever to link the plaintiff to the word or words complained of;

(3) in the circumstances of the case and in the light of the authorities a fair and reasonable compensation should be in the region of $15,000 for full liability. This sum however ought to be reduced because of the plaintiff's own behaviour in the matter. Judgment would be entered against the third defendant in the sum of $9,000 by way of damages.

Cases referred to:-

(1) *Lewis* v. *Daily Telegraph* [1964] A.C. 234.

(2) *Jones* v. *Skelton* [1963] 3 All E.R. 952, 958.

(3) *Grubb* v. *United Press Ltd.* [1963] 1 Q.B. 309.

(4) *Slim* v. *Daily Telegraph Ltd.* [1968] 2 Q.B. 157, 172.

(5) *Morgan* v. *Odhams Press Ltd.* [1971] 2 All E.R. 1156, 1184; [1971] 1 W.L.R. 1239, 1269.

(6) *Livingstone* v. *Rawyards Coal Co.* (1880) 5 App. Cas. 25, 39.

(7) *McCarey* v. *Associated Newspapers Ltd.* [1965] 2 Q.B. 86, 109.

(8) *Preed* v. *Graham* (1889) 24 Q.B.D. 53.

CIVIL SUIT.

M. Shankar for the plaintiff.

Chan Siew Yoon for the defendants.

Abdul Hamid J.: The claim is for damages for libel contained in: —

(a) an article in "Pacemaker" news publication of the 3rd defendant of June 10, 1970;

(b) a letter of July 27, 1970 by the 2nd defendant Lian Eng Siong; and

(c) a letter of September 22, 1970 by the 1st defendant O.C. Nio with a leaflet enclosed therewith entitled "How to identify a Twister".

The plaintiff was in the employ of the 3rd defendant as part-time agent before he resigned on July 15, 1970. At the time of resignation he was an agency supervisor. The 1st defendant Nio was at all material times 3rd defendant's agency supervisor. He later became Unit Manager. The 2nd defendant was the Vice-President of the 3rd defendant company.

It is alleged and admitted by the defendants that the plaintiff joined the company as part-time agent. He was appointed agency organizer under the 1st defendant (agency supervisor) as from January 1, 1969 and was promoted agency supervisor with effect from January 1970.

It is also alleged and the defendants further admitted that in the official publication called "Pacemaker" of May 8, 1970 there appeared the following passage: —

"Off-shoots of NIO Unit the newly promoted A.J. PETER and ALLAN TAN agencies continued to find places in the list of Leading Agencies for the fourth month in succession, that is to say, these two new Agencies were listed among the Leading Agencies ever since their promotions this year. We fondly hope that they will creditably maintain their positions all the time."

The plaintiff has further alleged that owing to interference by the 1st defendant of his agents he requested that he be released from the 1st defendant's agency. In a letter of May 7, 1969 the 1st defendant confirmed that all his agents would be left alone nevertheless, he was not released from the agency despite protest from him until October 27, 1969.

Of the passage appearing in the "Pacemaker" the plaintiff alleged that he requested for a correction of the impression created that there was severance of relationship between him and the 1st defendant. Instead the 3rd defendant falsely and maliciously printed and published of him in an article in the "Pacemaker" of June 10, 1970 of his relationship with the 1st defendant as agency supervisor, the full text of which appears in A.J.A.P. I.

It is the plaintiff's contention that the words meant and he understood them to mean that he was "one of the scoundrels that make up a minority society" and the uncomplimentary and adverse reference in the article as the person who created friction applied to him. The article also referred to his conduct and character and the quotation that followed referred particularly to his request for publication of the correction.

The defendants admit that the plaintiff by letter gave notice of resignation to the 3rd defendant through the 2nd defendant on July 15, 1970 and the resignation was accepted by letter of July 28, 1970.

The plaintiff is also alleging that the day preceding the acceptance of his resignation the 2nd defendant as Vice-President of 3rd defendant, falsely and maliciously wrote and published in a letter of A.J.A.P. II of his conduct and profession. It is the plaintiff's contention that the letter referred and was intended to refer to him and the words meant and he understood them to mean that his quitting the company was because he was a failure therein.

The plaintiff's further allegation is that on September 22, 1970 the 1st defendant in his capacity as Unit Manager, falsely and maliciously published of his profession as insurance agent to one Karthigesu s/o Rengasamy a letter enclosed with leaflet "How to identify a Twister" — A.J.A.P. IIIA and A.J.A.P. IIIB meaning and he understood to mean that the description "Twister" was applicable to his conduct and character.

The plaintiff has contended that consequent upon the acts of the defendants, he has been seriously injured in his character credit and reputation and in the way of his public office has been brought into public scandal and odium and is, therefore, claiming damages and costs.

The defence denied interference by the 1st defendant of the plaintiff's agents. It is claimed that the letter of October 27, 1969 released the plaintiff from the 1st defendant's agency. The defence also denied that the letter of May 7, 1969 had any relevance to the letter of May 3, 1969 referred to in paragraph 4 of the statement of claim.

Of the publication in the "Pacemaker" dated June 10, 1970 the defence admitted its publication with T.K. Chan as the editor but denied that the words were either in relation to the plaintiff's office or conduct or that the words or quotations or references set out therein applied, referred to or were capable of applying or referring to the plaintiff in the way of his office, conduct or character.

The 2nd defendant did not admit publishing the letter A.J.A.P. II either to Nanaprisom or at all or that if published it referred to the plaintiff or in the way of his profession or in relation to his conduct.

The 2nd and 3rd defendants have denied that the agency leader mentioned in A.J.A.P. II referred to or intended to refer to the plaintiff or that the letter bore or was understood to bear or capable of bearing any of the meanings alleged by the plaintiff or that the words complained of refer or were understood to refer or were capable of referring to the plaintiff. They said that the letter was published on an occasion of qualified privilege asserting that "it is the most common feature in the insurance world that when an agency leader leaves his company for another company he would do his utmost to persuade his agents, at least the efficient ones, to leave the company with resultant financial losses both to the company and the agents themselves. The said letter was necessary to protect the company's interest as well as that of the agents."

It is contended that the 3rd defendant Peter, Nanaprisom and Mosses Christy had a common interest in the subject-matter and publication of the letter, and, if the 2nd defendant published the letter (which was denied) it was a reasonable and necessary protection of the defendant company. The 1st defendant admitted writing and publishing the letter of September 20, 1970 to one Karthigesu and Lt. Cheah Cheng Choy enclosing leaflets but denied the letter was written and published in the way of the plaintiff's profession as insurance agent.

The 1st and 3rd defendants denied that the letter/leaflet meant or was understood to mean that the description "Twister" was applicable to the conduct

and character of the plaintiff. They further denied that the description bore or was understood to bear or capable of bearing any meaning defamatory of the plaintiff.

The 1st and 3rd defendants in the alternative contended that the letter and leaflet were published on an occasion of qualified privilege asserting that "Twisting as described in the said leaflet is a very common practice in the insurance world which, if successful, invariably results in financial loss both to the insurance company concerned and the policy holder. The said leaflet was sent by the 1st defendant on behalf of the 3rd defendant to Karthigesu son of Rengasamy and Lt. Cheah Cheng Chye as a timely advice to guard against twisters and not to be deceived by them."

They said that the 3rd defendant Karthigesu and Lt. Cheah had a common and corresponding interest in the subject-matter and publication of the leaflet and it was published in the reasonable and necessary protection of the interest of the company.

The 1st and 3rd defendants further contended that the description "Twister" if applicable to the conduct and character of the plaintiff (which is denied) was true in substance, and in fact, in that the plaintiff with the full knowledge of one Kumaravelu had applied for and obtained a life policy and that the 3rd defendant had admitted to persuade Kumaravelu to cancel his existing policy with the 3rd defendant and take out a Great Eastern Life Policy in its place.

I shall now deal briefly with the plaintiff's case as disclosed from the evidence adduced in court. The plaintiff said that he joined the AIA in 1968 as trainee agent under the 1st defendant on leaving the Government service after serving in various departments. At the material time he held many appointments such as the General Secretary of the CUEPACS and Branch Secretary of the Amalgamated Union of Employees in the Government Clerical and Allied Services. As agent he wrote more than 1.2 million sums assured and the company congratulated him for his fine performance. (See Exhibits PB5 and PB6). For the month of June 1968, he was one of the top ten of AIA agents in Malaysia. At the end of the year his position in the company was enhanced that on December 20, 1968 he received a letter from H. Hwang, Senior Vice-President and number one man in-charge of Malaysia and Singapore appointing him Organizer with effect from January 1, 1969. The 1st defendant then became his immediate superior. He sought a release from Nio's agency after 4 or 5 months. In his letter of May 3, 1969 with reference to Nio's letter of April 24, 1969, he referred to some unpleasant things Nio had done to him and also the absence of change in Nio's attitude towards him. He was hurt and felt insecure to be in Nio's agency and for this reason had asked that he be released from Nio.

The plaintiff said that all his agents complained to him that Nio was trying to bully them by depriving them of facilities such as use of telephone and stationery and Nio had even told them to work for him. When confronted Nio became indifferent and had even said "I have done it, so what?" He took the matter up with Liau complaining against Nio and Liau promised to look into the matter. Nio's attitude became worse and he had even omitted to pass messages from policy holders and prospective clients.

It is the plaintiff's allegation that unlike other agents in the same positions he had to share a room with Nio and had no telephone and Nio had even told some of his prospective clients that he was not in the company.

Of Nio's letter (PB12) the plaintiff said that it was not a true reflection of Nio's sentiment towards him. Nio, he said, did not deny the allegation made in the letter of May 3, 1969 (PB13).

It is also the plaintiff's case that on May 7, 1969 Nio wrote a letter to him (PB14) stating the conditions agreed upon at a meeting they had with Liau and Chew Tee Chye present. Nio did not abide by the agreement. As a result, he wrote the letter of June 27, 1969 (PB16) and on June 18, 1969 sent another letter requesting for release from Nio's agency reiterating that Nio had failed to abide by the agreement. This letter was forwarded by Nio to Liau. He then wrote a letter to Liau (PB19) stating among other things that it was impossible for him to have any sort of relationship with Nio, that Nio had failed to abide by the agreement and that there was no change in Nio's attitude towards him and also of Nio's interference with his agents and so forth. Finally, he asked to secure him a release and put him under K.L. direct. Liau wrote to him asking him to get the consent of Nio for the release. A copy of the letter was extended to Nio. Nio did not give his consent and so he wrote to Lam, Chairman of the Sale Executive Board asking for assistance to get a release from Nio.

On October 27, 1969 Nio released him from the agency (PB26). On receipt of the release letter, he informed Liau who then wrote to him (PB29) stating that he was writing to Singapore office to inform them of his agency transfer to K.L. direct. However, the same code number was to be used until end of the year. The plaintiff resented the use of same code number and wrote a letter to Liau protesting against it claiming that there was in effect no change in the agency and that his production was still channelled through Nio's agency. He asked Liau to clarify his position in the company. On November 14, 1969, he sent another letter to Liau protesting against Nio's prohibition of his agents using the telephone and against the conduct of Nio's son. On November 17, 1969 Liau wrote to Horace Wong asking that code number be changed. The plaintiff maintained that so long as the code number was not changed there was no transfer and that if the same code number were to be used he would still be under Nio. Subsequently, he was given a new code number and was to work directly under Liau. On January 1, 1970, he was promoted to agency supervisor.

Evidence is then adduced to show that in 1970 the production by the plaintiff and his agents was considered to be top ten in the country.

Referring to the paragraph in the "Pacemaker" where mention was made that he was one of the offshoots of Nio Unit the plaintiff said that he was angry

and raised an objection to T.K. Chan telling him that he had nothing to do with Nio and asking Chan to correct his statement in the next issue. He felt that the reference was made of him as off-shoots of Nio was because of Chan's good relationship with Nio. He alleged that T.K. Chan was aware of his problem with Nio. He resented that his name was linked with Nio.

The plaintiff proceeded to refer to the June issue of the "Pacemaker" on pages 53 and 54 under the heading "Human Relationship" where he said he was branded as a scoundrel for having created human friction consequent upon his taking the matter up with the editor for the correction to be made. It is his contention that uncomplimentary references were made to apply to him. It is his further contention that the plain ordinary words in these pages were meant to convey all bad things to people who create friction and he was one of the scoundrels who made up a minority society. As a result he confronted T.K. Chan but was told that it had nothing to do with him. He was not satisfied with Chan's attitude and asking him to make a statement in the next issue. Chan, however, brushed him off.

The plaintiff then asked Liau why he was branded a scoundrel. Liau too brushed him off saying that he was petty minded. He then submitted his resignation which was accepted. It is his contention that he lost hope completely although by his resignation he had a lot to lose.

The plaintiff then referred to a letter written by Liau (PB58) addressed to Peter Nanaprisom one of the company's agents stating that the agency leader, meaning him, was leaving for another company and 'the reason one leaves is because he is a failure'. He disputed that the sole purpose of the letter was to assist Nanaprisom to make up his mind in case he should contemplate changing company. He referred to paragraph 5 of the letter a quotation of the words of Lewis C. Young, a Manager of the P.I.C. in Seattle, Washington that —

"The first reason men leave is very simple; they are failures where they are."

The plaintiff contended that Liau knew of his resignation when he wrote the letter to Nanaprisom. When Nanaprisom brought the letter to his attention he also asked why they called him a failure. He said that almost all his agents asked him why they called him a failure. As a result he felt terribly disgusted.

In September or early October, Karthigesu s/o Rengasamy, one of the policy holders asked him how was it that he was called a "Twister". This was on account of the letter/leaflet sent by Nio. This letter informed Karthigesu that he had left the company and it contained a note at the bottom stating "How to identify a Twister".

The plaintiff contended that he was branded a 'Twister' and this letter had also falsely stated that he was his (Nio's) agent. The plaintiff referred to the leaflet in particular to the last paragraph in the second column which reads —

"Twisting is misrepresentation made to encourage policy holder to drop old policies and buy new ones in another company. The twister may persuade you to make loans on old policies instead of surrenders, with results equally damaging. A victim may never discover that he has been cheated."

The plaintiff has taken this to mean that being a twister he has no integrity. Consequently, his solicitors Skrine & Co. wrote two letters one to the company and the other to Nio (PB74 and PB72 respectively) asking them to sign a suitable withdrawal and to make an apology. The plaintiff alleged that there was no denial from the company except from Nio who denied that the letter and the leaflet were libellous.

The plaintiff went on to say that on September 11, 1970 he received a letter from Karuppiah (PB83) alleging that a payment of $400 was made to him (plaintiff) in connection with Kumaravel's policy and that money had not been paid to the company. This allegation was completely false as he had not owed the company this sum and that at no time did the company write to him for the sum.

According to the plaintiff Karuppiah came to see him in Kuala Lumpur after the receipt of the letter and had told him that he lost the $400. Karuppiah asked for an advice and an advance of $400. He advised Karuppiah that if he needed the $400 he could sell another policy from which he could advance $400 of the commission which comes to approximately $900 on $30,000 policy and he (Karuppiah) could make arrangement with the company to cover the loss.

Later Karuppiah again came and asked him to advance $400 and this time he asked Karuppiah to sell a Great Eastern policy to Kumaravel. Subsequent to this he wrote to Kumaravel (PB82) enclosing a proposal form for a Great Eastern policy. He also advised Kumaravel that as to the complication regarding the former application this can be sorted out to his favour without loss to him. With reference to PB79 the plaintiff stated that on May 12, 1970, the day Kumaravel applied for the insurance policy he was in the employ of the company and he was aware that such an application had been made and would have known if it had been approved on June 12, 1970. The plaintiff then pointed out that in a letter addressed by Karuppiah to him dated July 13, 1970 Karuppiah stated that Kumaravel was trying to pay the money soon. As regards the word 'complication' mentioned in his letter to Kumaravel the plaintiff said that he was told that Kumaravel could not get this policy unless he paid $400 to Nio. As for the statement that "the complication can be sorted out to your favour without any loss to you", the plaintiff said that he meant if he was able to sell a second policy, he could advance $400 to Karuppiah as the commission from the new policy and Karuppiah could hand over the $400 to Nio and get the AIA policy for Kumaravel as well. With reference to PB84, the plaintiff claimed that he never advised Kumaravel to drop the AIA policy, and had never requested him to ask for the refund of the deposit. The proposal to sell a second policy to Kumaravel was to assist Karuppiah. Referring to PB83 and PB84, he said that he confronted both Karuppiah and Kumaravel concerning them. Karuppiah told him that this letter was prepared for him by Nio who forced him to sign it. As regards the

$400 alleged to have been paid to him Karuppiah apologised and confessed that he had not paid the money. The plaintiff said that he also showed PB84 to Karuppiah. Karuppiah again apologised to him that Mr. Nio had threatened to put him in serious trouble if he did not get this letter signed by Kumaravel. The plaintiff also saw Kumaravel and he too was very sorry about it and had said that he did not know that this letter could have any effect on him since he had already left the company. Kumaravel explained that he signed the letter because Karuppiah had said that he could not obtain the policy unless he signed the letter.

The plaintiff called Mohd. Kassim bin Hj. Ali who testified to the effect that he received PB63 with a letter "How to identify a Twister". The letter advised him that the plaintiff had left the company. On scanning the leaflet, he felt that he was cheated by the plaintiff. Under cross-examination, Mohd. Kassim said that he was disturbed by the words in the leaflet to the effect that "a victim may never discover that he has been cheated". He agreed that the sentence had something to do with buying of a new policy and the dropping of an old one. The plaintiff also called Nanaprisom who said that he received PB58 and on reading it felt that the company was referring to the plaintiff when it mentioned the word "failure". He saw the plaintiff and showed it to him. Subsequently he left the company because no one was to take care of him after the plaintiff left. Thereafter he worked as part-time agent of Great Eastern. He agreed that when the plaintiff left AIA he was in a state of dilemma not knowing what to do. He also agreed that the letter contained advice to an agent in a state of dilemma because his agency leader had left or is about to leave. Lastly the plaintiff called Karuppiah s/o Muthu who testified that he was an agent of the AIA in 1970 and the plaintiff was his leader. He induced Kumaravel to take out a policy. Of his letter (PB55) Karuppiah confirmed that he had not paid the money to the plaintiff. He also said that he had not paid any money on Kumaravel's policy to the plaintiff. He admitted that he told the plaintiff he collected a sum of $400 from Kumaravel and had lost it and then asked the plaintiff to help him pay the $400. He also admitted that the plaintiff advised him to collect the balance of $589 from Kumaravel and to hand it over to the company to enable Kumaravel's policy to be issued. Karuppiah went on to say that at the company's K.L. office Nio told him that the plaintiff had left for another insurance company. Nio had also told him that the plaintiff was a liar — he praised the AIA when he was with AIA. Karuppiah also said he discussed about the policy with Nio telling Nio that he collected $400 from Kumaravel but had lost the money and was therefore not in a position to pay the company. Nio then told him that he (Nio) would pay the $400 if he could help him write to the plaintiff stating that he had given the plaintiff $400, and if he did not do so he would put him into trouble. Karuppiah further said that Nio wanted to know a lot about the plaintiff and had asked him for help disclosing that he and the plaintiff were having a lot of trouble and if he should refuse he would put him (Karuppiah) into trouble. At a meeting with Oorjitham, the Legal Adviser of the company, Nio told him to tell Oorjitham that he had given the plaintiff $400 and he did tell Oorjitham what Nio had instructed him to say. After that Oorjitham took him to see an American man and he also told the American what Nio had instructed him to say. He added that he was forced to do all that. Karuppiah then stated in evidence that Nio dictated a letter for him to sign and send it to the Vice-President of the company. Continuing his testimony Karuppiah said that the policy would only be issued to Kumaravel upon his signing the letter. With reference to PB82 Karuppiah confirmed that the plaintiff wrote it after he asked the plaintiff to help him at which time the plaintiff was in the Great Eastern. There was a proposal that Kumaravel take out a Great Eastern policy but Kumaravel refused.

In November Nio sent a letter to Kumaravel enquiring about the alleged money order for $400. Karuppiah on the other hand said that he wrote to Liau (P12) to say that Nio was going to pay $400 on his behalf as he had signed a letter to the plaintiff as instructed by Nio. Following this, he received several requests from Nio to come to K.L. office.

Referring to Kumaravel's letter addressed to the manager of the company (PB84) to the effect that he had been advised by the plaintiff to drop the AIA policy and to request for a refund of the deposit of $900 for him to take up a Great Eastern Policy, Karuppiah stated that this letter was prepared by Nio and at Nio's request he took this letter to Kuala Lipis to get it signed by Kumaravel with a promise that on signing it Kumaravel would get the policy. Karuppiah disputed that the plaintiff advised Kumaravel to drop AIA policy. It is in evidence that Karuppiah was subsequently prosecuted for criminal breach of trust. He was found guilty and sentenced to six months' imprisonment.

That concludes briefly the case for the plaintiff. The defendants adduced evidence firstly through Liau to the effect that the plaintiff joined the AIA as trainee agent under Nio and left AIA in July 1970.

With reference to the "Pacemaker", Liau said that the object of the publication was more on sales promotion, motivation and agency activities and insemination of sales ideas. Of PB53 he said that the object of the article was to advise the agency people not to develop human friction which is unproductive. This is common amongst agency leaders.

Liau disputed the plaintiff's allegation concerning the article. He said that he would have taken the plaintiff to see T.K. Chan, the editor and would have told him that the article did not refer to him. Liau agreed that the plaintiff did not like to be associated with Nio unit. He also agreed that the relationship between Nio and the plaintiff was not good.

As regards PB58, Liau said that this was a standard letter at that time. There was a drift of agency leaders and agents to other companies because of better offers. He named four of those who left sometime in July. PB58 was addressed to all those agents under the agency leaders who had resigned or were planning to resign.

Liau maintained that the training of agents and agency leaders incurred expenditure and would be a loss to the company if another company takes them away. He stated that some agents approached him for advice as they learnt that their agency leaders were planning to leave the company. He, therefore, decided to send the letters out, hence the issue of PB58. The quotation complained by the plaintiff was not meant to refer to any particular person.

With reference to PB67 — the "Twister" leaflet — the object was to advise policy holders against dropping their policies, to protect their interest against losses and also to protect the interest of the company in particular its human interest. He maintained that the leaflets were commonly used by the company and they were sent to policy holders accompanying premium notices when premiums were overdue.

Liau also said that Karthigesu, Mohd. Kassim and Mr. Cheah Cheng Chye bought policies from the plaintiff when the plaintiff was working under Nio and when the plaintiff came under a direct agency, the company decided that Nio service the policy holders. The leaflets were sent out to them to advise them against dropping the policies. Nio would have suffered loss if they had dropped their policies.

Liau maintained that the letter cum leaflet (PB65) was to inform the policy holder that for all future services he was to communicate with Nio. Liau also maintained that the leaflet was incapable of referring to the plaintiff. The statements contained therein were general statements.

As regards Kumaravel's policy he stated that it was sent to Kumaravel on November 28, 1970 although $400 had not been received.

Of his relationship with the plaintiff, Liau said that it was good. He was, however, aware that there was some unpleasantness between the plaintiff and Nio. The plaintiff frequently complained to him about Nio but not Nio. He had approached Nio regarding the plaintiff's complaint. Nio's attitude towards the plaintiff, nonetheless, was very accommodating. Referring to the three conditions agreed by Nio in PB14, Liau said that this was on account of the plaintiff's complaint against Nio's interference with his agents. Both had given different versions. Nio, however, agreed to the conditions, only for the sake of peace. Nio gave up his rights contained in conditions 2 and 3.

Nio testified that he was Unit Manager from January 1, 1970. The plaintiff was recruited by him in January 1968, and plaintiff was under his agency until the appointment of an agency supervisor upon release by him. While working under him, the plaintiff accused him of pinching his agents. This he said he could not do as an agent under his agency required a letter of release from his agency leader before he could join another agency.

As to the three conditions allegedly agreed by him, Nio said that he agreed to the conditions that agents be left alone only for the sake of peace. Referring to PB12, the letter he wrote to the plaintiff congratulating him for his performance, Nio said that the plaintiff would benefit if he fulfilled his quota and so would he. He denied that the letter was sheer hypocrisy. Nio added that throughout his association with the plaintiff he never offended him and never made a complaint against him. As regards the PB63, the "Pacemaker", Nio said that he was not on the editorial board and was not in any way connected with the "Pacemaker" and he had not told the editor T.K. Chan to publish anything. Nio alleged that in the year 1970, a lot of agency leaders and agents left the AIA and many of his own agents left to join the Great Eastern. Of PB63, PB65 and PB66, Nio said that these letters were from him and he enclosed leaflets "How to identify a Twister". They were policy holders of AIA at the time and they got the policies through the plaintiff. He referred to the plaintiff in the letter as my agent because the policy was sold through the plaintiff when the plaintiff was his agent. Nio added that he received overriding commissions in respect of these policies and when the plaintiff left AIA, these policies had to be serviced by him. The purpose of sending the letters PB65, 66 and 67 was to advise the policy holders that the plaintiff who sold them the policies had left the company and he would be rendering them further service as and when the need arose. Explaining why the 'Twister' leaflet was enclosed Nio said this was normal to protect the policy holders and it was in their interest as well as the interest of the company. He contended if a policy holder were to drop a policy either by surrendering or lapsing, the company would lose business. He summed up by saying that when he sent the leaflets he did not intend to link the plaintiff to them.

Speaking of Kumaravel's policy, Nio stated that the AIA received $500 but did not receive $400. Referring to D2 Karuppiah's letter to Liau, Nio stated that Karuppiah handed him a copy of the letter and had said that he paid the $400 to Peter. He, however, told Karuppiah that it was a matter for him and the plaintiff.

As regards PB83, Nio maintained that although the letter was typed on the AIA letter-head he did not write it and had no knowledge of it. Nevertheless, he investigated and in this regard P11, P13, P14 and D10 and D11 are relevant and D10 was a letter from him to Kumaravel enclosing a policy even though he did not know what happened to the $400. Subsequently, he wrote a letter P15 to Karuppiah as Mr. Oorjitham wanted him to come to Kuala Lumpur. This was followed by a telegram of November 17, 1970 (P16). As regards Karuppiah's allegation that he was asked to come to Kuala Lumpur to take PB84 to Kumaravel for the signature, Nio denied this.

On the evidence before the court, it is common ground that the plaintiff was a very efficient agent indeed due recognition was accorded to him by the company. However, judging from the conduct of the plaintiff it was obvious that to him mere recognition was not enough. For his performance in the company the plaintiff somewhat felt that he deserved better treatment and he seemed determined to secure higher appointment. It is my impression that he was so obsessed with the desire to enhance his position that he became rather impatient and sensitive. Apparently, he conceived the idea that everyone was against him,

particularly Nio. To the plaintiff, Nio was some sort of an obstacle in the way of his promotion and there was an inclination on the part of plaintiff to find fault with whatever Nio did, to the extent of making mountains out of molehills. The plaintiff's resentment of Nio rose to quite out of proportion to the complaints that he was making out against Nio. Looking at the evidence as a whole, I am inclined to think that the plaintiff was in reality exploiting the friction he had with Nio to further his own interest. Nio was no fool and he knew of the plaintiff's real intention and quite naturally resented it. It is also quite possible that he felt that the plaintiff was being ungrateful to him after he himself had taken the plaintiff in as his agent.

The relationship between Nio and the plaintiff completely broke down and the friction between them deteriorated and developed into an open conflict well-known to those involved in the attempt to patch up matters between them. The plaintiff's desire was clearly revealed in his letter when he said "I sacrificed my salaried job thinking I can be my own boss and that no one can and will interfere in my own progress." Whilst it is acknowledged that the plaintiff was a very efficient agent he was, as I observed earlier, far from being satisfied or contented. My observation on the attitude of the plaintiff is to emphasise that in that frame of mind he was quite determined to show that there was every justification for him to be separated from Nio. In this respect it must be borne in mind that the plaintiff cannot conceivably claim that he was ignorant of the company's hierarchy when he opted to join that company. The plaintiff's complaint that he was told on his return from India in March 1969 that Nio was trying to bully his agents and refused them the use of the telephone and office stationery unless they worked for him (Nio) was merely his own words against Nio. The plaintiff's own witness, Peter Nanaprisom, an agent of AIA in 1970 did not testify to this effect. Nanaprisom confessed that he did not know why the plaintiff left AIA. He expressed the view that probably the plaintiff left for better prospect. The plaintiff also failed to call any of the agents he alleged had been bullied or told to break off from him. The discord between Nio and the plaintiff was clearly to a large measure brought about by the plaintiff's acute resentment of Nio and he even objected to any reference of his association with Nio. Liau described the plaintiff's objection as petty. Nio himself appeared to have reacted adversely to the plaintiff's attitude and resented it. There was, therefore, very serious bad blood between the plaintiff and Nio.

In view of that bad blood that existed between the plaintiff and Nio that the plaintiff strongly objected to the reference made of him as an off-shoot of Nio unit and that triggered off the whole incident leading to the present litigation. The plaintiff was angry and complained to T.K. Chan and wanted him to make a correction in the next issue. Instead of a correction the following month's issue of the "Pacemaker" came out with the publication complained of. There was in effect no valid reason for the plaintiff to take a serious exception because the plaintiff's unit was really an off-shoot of Nio unit even though by then he ceased to have dealing with Nio. The plaintiff was in fact recruited by Nio, started as trainee agent under Nio unit and became agency organizer directly responsible to Nio. It was only subsequently that he was released by Nio and appointed agency supervisor. Despite all that I feel that there was really no justification for an article as contained in June "Pacemaker" to be published concerning the plaintiff.

The plaintiff also complained that he was not released by Nio until October 27, 1969. The plaintiff had no reason to complain because the release he spoke of was connected with the setting up of a separate agency which the plaintiff himself forced upon the management to do it for him. It was not a case where the plaintiff was offered to be an agency supervisor but was unable to accept it because Nio refused to release him. It all started when the plaintiff asked that a separate agency for him be established. On receipt of the request Liau told the plaintiff (see PB21) that in the first place he was to obtain a letter of consent from Nio and only then he could take the necessary action. Liau wrote the letter to the plaintiff on October 6, 1969 and Nio released the plaintiff on October 27 barely three weeks after Nio received the request. Even after the release there were other minor complaints raised by the plaintiff (see PB30, 31 & 32) against Nio. I do not consider them material to the plaintiff's case, on the contrary they confirm my finding that the plaintiff's own conduct was to a considerable extent responsible for the bad blood that existed between him and Nio. It is in the light of that conflict between the plaintiff and Nio that this court is to determine whether the article entitled "Human Relationship" was in fact published with the intention that it is imputed to the plaintiff. As I had observed earlier there was resentment on the part of Nio towards the plaintiff for the way he behaved and in all probability T.K. Chan felt the same way and the article was clearly a reflection of that resentment and an expression of the company's displeasure towards the plaintiff. My view, therefore, is that the article was in fact published with particular reference to the plaintiff's conduct and character.

Mr. Chan Siew Yoon, counsel for the defendant, submitted that leaving out paragraph 1 of the article and disregarding the quotation at the end with reference to the 'scoundrel' this article does nothing more than to identify friction in its various forms and advise readers the ways and means to avoid or reduce friction and that no reasonable reader will say that it was an attack on the character of the plaintiff. Mr. Chan is asking the court to view the article on "Human Friction" in isolation and to conclude that there is a moral behind the article. I am in agreement with the submission if the article is viewed in isolation and read without reference to any particular person but viewed in the light of the conflict between the plaintiff and Nio and with reference to the state of their relationship I am inclined to think that the article was clearly meant to refer to the plaintiff with particular reference to the plaintiff's conduct and character arising from the plaintiff's insistence that a correction be made of an earlier reference to him as off-shoot of Nio unit.

T.K. Chan was fully aware of the entire dispute that existed between Nio and the plaintiff. There was in fact unchallenged evidence to this effect and the plaintiff did approach T.K. Chan to make a correction, instead T.K. Chan wrote to say that the plaintiff had taken up matters with them disclaiming association with Nio unit. The article was cleverly placed under a specific heading entitled "Human Relationship". It started with a remark that the plaintiff had asked for a correction as to his exact position, and this remark was neatly linked to a sentence which reads "This reminded us of a book we read on 'Human Friction' which we would like to quote in part." The quotation that followed was cleverly made and was part of the article entitled "Human Relationship". Thus to my mind adequate identification was made of the person the article was intended to apply. There was no question of any ambiguity as to the intention which prompted the publication of the article. Clearly it was meant to cast aspersion on some one whose relationship had caused human friction. Read, therefore, in the light of the surrounding circumstances that led to the publication of the article the reasonable inference that may properly be drawn is that the author, knowing full well of the friction and the plaintiff's conduct in the matter did intend to identify the plaintiff as the person responsible for the friction. It is contended that the article was not intended to ridicule the plaintiff but to exhort agents and agency leaders to work in peace and harmony for the betterment of themselves and the company. It is possible but not probable. In any event I do not think it was published for the specific purpose of exhorting agents and agency leaders to work in peace and harmony but on account of the plaintiff's conduct and character in the friction that developed between him and Nio. Those who knew of the conflict between Nio and the plaintiff would not have failed to know that the article was meant to refer to the plaintiff. It was not a mere coincidence that it was published at such a time and under those circumstances and in the manner it was done.

As for that part of the quotation which reads — "there is always one consolation we can fall back on. If it were not for these scoundrels that make up a minority of society, how could we measure the goodness of the majority" — Mr. Chan Siew Yoon submitted that this is not part of the quotation from the book on "Human Friction". He also submitted that if the plaintiff was not accused of causing friction there is nothing that follows that could refer to him. In this regard I find that the whole article entitled "Human Relationship" right from the point the opening remark was made of the plaintiff's complaint down to that part of the quotation of "scoundrel" was so neatly and cleverly arranged that the latter quotation did form part of the article relating to the trouble maker. In my judgment the article was such that it would lead those who had dealing with the plaintiff to the conclusion that the article did in fact refer to him.

In coming to the conclusion that I did, I have borne in mind the law relating to the issues that have arisen in the present case. My attention has been drawn to *Gatley* on Libel and Slander 7th Edition Paragraphs 89, 93 and 98 and the case of *Lewis* v. *Daily Telegraph Ltd.*[1] and also to other law applicable to the present case.

It is apparent that the recognised approach is "that as the law of defamation is concerned with the effect of the words used on ordinary people account must be taken of the fact that the layman's capacity for implication is much greater than the lawyer's. And further, in some cases there may be special facts or circumstances known only to a limited number of people which for these people give the words used a special meaning or meanings." The law has, therefore, developed the concept of two types of meanings in a defamation action —

(i) natural and ordinary meanings, and

(ii) innuendo meanings

(*Duncan & Neill* Defamation page 8/9)

It is to be observed that the natural and ordinary meaning includes inferences and the correct method of approach to the question of construction was considered at length in the House of Lords in *Lewis* v. *Daily Telegraph Ltd., supra,* where Lord Reid at page 258 put the matter as follows: —

"There is no doubt that in actions for libel the question is what the words will convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of wordly affairs.... What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But the expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them and that is also regarded as part of their natural and ordinary meaning."

(See *Jones* v. *Skelton*[2]).

See also *Grubb* v. *United Press Ltd.*[3] a case in which for the first time a clear distinction was drawn between inferential meaning "innuendos" which depends on special effects or circumstances known only to a limited number of people.

On the question of intention, Diplock L.J., emphasized the irrelevance of the intention of the publisher in the case of *Slim* v. *Daily Telegraph Ltd.*[4] as follows —

"What is the 'natural and ordinary meaning' of words for the purpose of the law of libel? One can start by saying that the meaning intended to be conveyed by the publisher of the words is irrelevant. However evil the imputation upon the plaintiffs' character or conduct he intended to communicate it does not matter if, in the opinion of the adjudicator upon the meaning of the words, they did not bear any defamatory meaning. However innocent an impression of the plaintiff's character or conduct the publisher of the words intended to communicate, it does not matter if, in the opinion of the adjudicator upon the meaning of the words, they did bear a defamatory meaning."

In the light of these principles of law, it is pertinent to consider a publication in the context in which the words are used and the mode of the publication, for example, the prominence given to the heading employed and the nature of the publication, for example, the emphasis placed upon certain words used. They are important considerations because they tend to in-

duce an ordinary man to infer from the words complained of the meaning meant to be understood. In the case under consideration I find no room for confusion or doubt that viewed from the nature of the publication the defamatory words used were referable to the plaintiff and were so used with the intention of identifying the plaintiff.

In considering this case I have also borne in mind that "in every case where identification is an issue the question is: would reasonable persons reasonably believe that the words referred to the plaintiff? If reasonable persons would so believe, the defendant will not escape liability though he may have tried to disguise his reference to the plaintiff by using initials or asterisks or a fictitious name or some other subterfuge. Nor will he escape liability (unless he can establish a defence of unintentional defamation) even if he had never heard of the plaintiff or intended to refer to someone else." *Duncan & Neill* on Defamation — page 24.

At page 27 in *Duncan & Neill* paragraph 6.07 the author refers to two cases which I think may usefully be set out hereunder —

"How the tests are to be applied
6.07 A court in deciding whether a reasonable person would understand the words to refer to the plaintiff does not expect such a person to consider the matter in detail. Thus in *Morgan* v. *Odhams Press Ltd.*(5) Lord Pearson said in relation to a report in a Sunday newspaper:

'... I do not think the reasonable man — who can also be described as an ordinary sensible man — should be envisaged as reading this article carefully. Regard should be had to the character of the article: it is vague, sensational and allusive: it is evidently designed for entertainment rather than instruction or accurate information. The ordinary, sensible man, if he reads the article at all, would be likely to skim through it casually and not give it concentrated attention or a second reading. It is no part of his work to read the article, nor does he have to place any practical decisions on what he reads there. The relevant impression is that which would be conveyed to an ordinary sensible man (in this case having knowledge of the relevant circumstances) reading the article casually and not expecting a high degree of accuracy'."

See also the speech of Lord Morris of Borth-y-Gest where he said at page 1170:

"What must be contemplated is a reading of a newspaper in what a jury would consider to be the ordinary way in which a newspaper article would be read. The average reader does not read a sensational article with cautious and critical analytical care. A plaintiff who successfully complained of an article which described someone as a churchwarden at Peckham was neither a churchwarden nor did reside at Peckham."

In the same case Lord Reid referred to *Lewis* v. *Daily Telegraph Ltd.*, *supra* and said at pages 1162-1163: —

"If we ... take the ordinary man as our guide then we must accept a certain amount of loose thinking. The ordinary man does not formulate reasons in his own mind: he gets a general impression and one can expect him to look again before coming to a conclusion and acting on it. But formulated reasons are very often an afterthought. The publishers of newspapers must know the habits of mind of their readers and I see no injustice in holding them liable if readers, behaving as they normally do, honestly reach conclusions which they might be expected to reach. If one were to adopt a stricter standard it would be too easy for purveyors of gossip to disguise their defamatory matter so that the judge would have to say that there is insufficient to entitle the plaintiff to go to trial on the question whether that matter refers to him, but the ordinary reader with perhaps more wordly wisdom would see the connection and identify the plaintiff with consequent damage to his reputation for which the law would have to refuse him reparation."

I shall now turn to the plaintiff's allegations against the 2nd defendant in respect of letters written by him to Nanaprisom, an agent of the company at the material time. It is admitted that the words "agency leader" appearing therein refer to the plaintiff and it is also admitted that the 2nd defendant did write the letter. It is pointed out by Mr. Shankar, counsel for the plaintiff, that the letter to Nanaprisom was sent the day before the plaintiff's resignation and this letter was intended to imply that the plaintiff was a failure in the company, the reason why the plaintiff left.

It is the plaintiff's case that the purpose of the letter was to prove to his agents that he was a failure, nevertheless, in answer to question by Mr. Chan the plaintiff agreed that the letter was an advice from the company to someone in a state of dilemma because of the departure of the agency leader.

On the materials before me there was some justification for the plaintiff to suspect that as he had tendered resignation it was the defendant's intention to show that he left because he was a failure. His suspicion was possibly influenced by the fact that this letter was sent at about the same time he tendered the resignation. But on the contrary it was probable that the defendant's intention in sending the letter was to protect the company's legitimate interest. One of the questions that calls for determination is whether the letter was meant to imply that the plaintiff was a failure. On the other hand, was it in fact sent out with a view to protect the company's interest without any intention to refer to the conduct and character of the plaintiff. It is submitted that it was the company's intention to stop agents from leaving the company. It is significant to note that when the plaintiff resigned there was every possibility that those agents who had been working for him might also decide to leave and for this reason the company was obliged to take all necessary steps to stop the agents from leaving. There is merit in the company's contention that it was in its interest to advise agents who proposed to leave to consider seriously. There is also merit in the company's further contention that it was in the interest of the agents to receive such advice. The defendants contended that this was a standard letter at the time and this was sent out on account of a drift of agency leaders and agents to other companies. It is indeed not disputed that the training of agents and agency leaders incurred expenditure and there would have been loss to the company if other companies were to take them away.

With reference to the quotation appearing in the letter, the plaintiff contended that it meant to refer to him. In this regard I find that the contents of the letter including the quotation ought to be read as a whole in order to determine whether on the balance of probabilities, the letters were intended to convey the impression that the plaintiff was a failure with reference to his conduct and profession. In my judgment the facts relating to the issue of A.J.A.P. II warrant a finding that the defendant was justified in order to protect the company's interest to take reasonable measure as was necessary to prevent agents from lea-

ving. Nanaprisom for one admitted that he was in a state of dilemma because the plaintiff left. There is also merit in the defendant's contention that the company had incurred expenditure in the training of agents and it would mean loss for the company if they should leave. In my judgment the letters were not meant to refer to the character of the plaintiff or that it was capable of bearing defamatory meaning concerning the plaintiff. The quotation contained in the letter must also be viewed in the light of the finding I have arrived at. On the balance of probabilities it is also my finding that no reasonable reader would associate the letter with the plaintiff, or construe it to contain defamatory publication of the plaintiff. The quotation on failure was to my mind nothing more than a general observation incapable of conveying the imputation alleged by the plaintiff.

In any event on the evidence before the court and for reasons I have stated I am firmly of the view that A.J.A.P. II was published primarily to protect the company's interest with no intention whatsoever to link the plaintiff to the word or words complained of.

Finally, I refer to the letter of September 22, 1970 by the 1st defendant with a leaflet entitled "How to identify a Twister" attached to it. (A.J.A.P. IIIA and A.J.A.P. IIIB) — Mr. Liau maintained that the letter was to inform the policy holder that for all future policy services he was to communicate with Nio. He also maintained that the leaflet was incapable of referring to the plaintiff and the statements contained therein were general statements. Nio himself testified to that effect. He further added that it was normal to enclose the leaflet, the intention being to protect the policy holder and it was to safeguard their interests as well as the interest of the company. If a policy holder were to drop a policy even by surrendering or lapsing, the company would lose business. He also said that the leaflets were not intended to refer to the plaintiff.

Mr. Chan Siew Yoon, in his submission said that he conceded a person receiving the letter together with the leaflet may conclude that it was the intention of the writer to identify the plaintiff as a twister but in fact there was no such intention.

To my mind, it is proper to assess the evidence as a whole and to consider the circumstances surrounding and the conduct of the parties in order to arrive at a finding whether there was any such intention. In the first place I do not think it can be disputed that the letters were sent out to policy holders who took out their policies through the plaintiff. And it cannot also be disputed that at the time this letter was sent out the unpleasant experiences Nio had with the plaintiff was probably still fresh in Nio's mind. Incidentally, there was also the allegation made by Karuppiah regarding Kumaravel's policy. According to Karuppiah he told Nio that Kumaravel gave him the $400 but the money was not paid to the company. Nio then said that he would pay the $400 if he (Karuppiah) could help him write to the plaintiff stating that the $400 had been handed to him (plaintiff). Karuppiah also alleged that he resigned on September 1, 1970 (Exhibit P8) because Nio had asked him to do several things against the plaintiff. He further said that Nio had even asked him to tell Oorjitham, the company's legal adviser, that he had given the $400 to the plaintiff.

After careful consideration I find that I cannot attach any credit to his testimony. He is totally unreliable and I form the impression that he is an untruthful witness. It is revealed that Kumaravel paid the $400 to Karuppiah and the money was used by him, and to save his own neck he put the blame on the plaintiff. Nio knew of Karuppiah's allegation and Liau confirmed this when he testified that he handed D2 to Nio to deal with it. Liau also confirmed that on September 8, 1970 Nio was already handling all matters connected with Karuppiah. The truth of the matter was that neither Liau nor Nio believed the plaintiff had received the money. Karuppiah obviously did not do a good job in attempting to shift the blame to the plaintiff and it was for this reason that the company did not send any letter to enquire from the plaintiff about the sum Karuppiah alleged he had received. Nio in fact dismissed it by saying that this was entirely a matter between him (Karuppiah) and the plaintiff. On the evidence before the court I am unable to conclude as a fact that Nio had indeed gone to the extent of conspiring with Karuppiah to put the blame on the plaintiff on the non-payment of the $400. Nio did conduct investigation and had sent telegram and letters summoning Karuppiah to Kuala Lumpur in an endeavour to know the truth as to what had happened to the money order for the sum of $400.

In the course of submission it is urged upon me that the reason for sending A.J.A.P. III was on account of the long history of dispute between Nio and the plaintiff. With respect I cannot accept that this was so in this particular case. I may perhaps be persuaded to agree with the plaintiff's contention, if the letters and leaflets were sent out after the plaintiff had written to Kumaravel urging him to take up the policy with the Great Eastern. That, however, was not the case.

Despite the prolonged dispute between Nio and the plaintiff I do not think that the circumstances preceding the issue of the letters and the leaflets warrant a finding that the letters and the leaflets were meant to refer to the plaintiff and were capable of defamatory to him. The letters and leaflets were not sent out immediately after the plaintiff had departed from the company but undeniably not long after.

In the final analysis it is my considered judgment that there was every justification for the company and Nio not only to advise the policy holders that since the plaintiff had left they could communicate with him for future services but also to give a general caution against any person who might ask them to drop old policies for new ones in other companies. In the sphere of competitive insurance business it is not unusual to anticipate that an insurance agent from one company to persuade a policy holder of another company to substitute policies or buy new ones in place of old. The mere fact of enclosing a leaflet of that nature should be construed to mean that it was the defendant's intention to identify the plaintiff unless the words used and the mode of publication were such that a reasonable person would have understood it to refer to the plaintiff. It is rather significant to observe that the plaintiff did, in fact, make an attempt to

get Kumaravel to drop the policy and this proved that the conduct of the plaintiff was not in the circumstances totally innocent.

I may in passing observe that though there was reference made to the plaintiff by name in the letter it was clearly not done with the intention that the words contained in the leaflet should apply to the plaintiff. Although the leaflet was attached to the letter it was in fact a separate document and the reference made to the plaintiff in the covering letter should not link the words used in the leaflet to the plaintiff. It is particularly so when the reference made to the plaintiff in that letter was specifically to inform the policy holders that the plaintiff had left the company and to invite them to communicate with him (Nio) if they required services to be rendered.

The question of malice has been raised in the pleadings. My findings of fact in the instant case provide the answer whether they support the plaintiff's contention. At the risk of repetition I would say that the letters and the leaflets were sent out primarily to protect the interest of the company for if the policy holders should drop the policies this would have entailed financial loss to the company. On the balance of probabilities I find that the defendants were not actuated by improper motive when the letters and leaflets were sent out and it did not seem to me to be their intention to link the plaintiff to the description of twister. By the same token I am also unable to conclude that it was not in the interest of the policy holders to receive a caution of the nature for if they should drop the policies it would invariably result in financial loss to them as well.

Having arrived at the decision that I did on the issues disclosed in the pleadings, it is my judgment that the plaintiff has failed to establish his claim against the 2nd defendant in respect of the letter contained in A.J.A.P. II and the plaintiff's claim is therefore dismissed.

The plaintiff's claim against the 1st and 3rd defendants in respect of the A.J.A.P. IIIA & B is also dismissed as it is my finding that the plaintiff had failed to establish a *prima facie* case against them.

In the light of my findings of fact, it is my judgment that the plaintiff has succeeded in proving a *prima facie* case against the 3rd defendant in respect of A.J.A.P. I. Hence the court will enter judgment for the plaintiff and award such sums as will be assessed.

The only remaining issue for determination, therefore, is the question of damages. The general rule is that in an action for defamation the damage is to be assessed on the compensatory basis. It is the settled principle that the purpose of compensatory damages is to restore the plaintiff as far as the money can do so to the position he would have been if that had not been committed.

Lord Blackburn stated this principle of restitution *in integrum* in *Livingstone* v. *Rawyards Coal Co.*[6] as follows —

"Where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which would put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation."

In applying this principle in the assessment of damages the court will include a substantial subjective element because the plaintiff's pain and damage to reputation cannot be computed by the use of any yardstick in a sum of money and for this reason uniformity in the quantum of awards cannot be sustained. Speaking of subjective element Diplock L.J. in the case of *McCarey* v. *Associated Newspapers Ltd.*[7] had this to say —

"I do not believe that the law today is more jealous of man's reputation than of his life or limb. That is the scale of values of the duel. Of course, the injuries in the two kinds of case are very different, but each has as its main consequences pain or grief, annoyance or unhappiness, to the plaintiff. In this court recently we refused by a majority to disturb a verdict of a jury awarding £2,000 to a woman thirty years of age who had, after considerable suffering for many months and two operations in hospital, had a leg amputated below the knee and her knee permanently immobilised. In that case it was the view of the Court of Appeal that a proper measure of damages, had the award been made by a judge would have been in the neighbourhood of £4,000 to £6,000, a figure which is in scale with the amount of damages which are commonly awarded (and have been approved by this court) in serious physical injury cases. If £2,000 is not inappropriate, or if £4,000 to £6,000 is appropriate, compensation for a life-long injury of that character which has its physical effect every day of the plaintiff's future life, and £9,000 is the appropriate award for the injury done to the plaintiff in this case, then I can say that the scale of value is wrong, and if that is the law, so much the worse for the law. But I do not accept that that higher scale of values in defamation cases is sanctioned by the law. It is, I think, legitimate as an aid to considering whether the award of damages by a jury is so large that no reasonable jury would have arrived at that figure if they had applied proper principles, to bear in mind the kind of figures which are proper, and have been held to be proper, in cases of disabling physical injury."

In the light of the law concerning the assessment of damages, it is apparent that it is indeed difficult to draw a fair comparison with awards in other types of action and to put forward in competitive standards by which the right figure can be gauged in any particular case. It is also evident that in the assessment of damages the courts will be guided by certain factors amongst them the seriousness of the defamation, the special damages, injury to plaintiff's feelings, the extent of the publication and the mitigating factors.

In the instant case, there is no proof of special damages and no particulars have been put forward.

It must also be borne in mind that in considering injury to feelings the court has to consider the effects on the plaintiff's feelings. In *McCarey* v. *Associated Newspapers Ltd., supra,* Pearson L.J. dealt with the various elements in compensatory damages as follows —

"Compensatory damages, in a case in which they are at large, may include several different kinds of compensation to the injured plaintiff. They may include not only actual pecuniary loss and anticipated pecuniary loss or any social disadvantages which result, or may be thought likely to result, from the wrong which has been done. They may also include the natural injury to his feelings — the natural grief and distress which he may have felt at having been spoken of in defamatory terms, and if there has been any kind of high-handed, oppressive, insulting or contumelious behaviour by the defendant which increases the mental pain and suffering caused by the defamation and may constitute injury to the plaintiff's pride and self-confidence those are proper elements to be taken into account in a case where the damages are at large."

For the present case the court may be disposed to take into consideration the mitigating factors namely the plaintiff's own conduct in the matter. Speaking of conduct as mitigating factor I refer to *Duncan & Neill* on Defamation of page 140 under the heading: THE BEHAVIOUR OF THE PLAINTIFF TOWARDS THE DEFENDANT AND IN THE ACTION as follows —

"In all such cases it must be appropriate to say with Lord Esher MR in *Preed* v. *Graham*:(6) '... in actions of libel... the jury in assessing damages are entitled to look at the whole conduct of the defendant' (I would personally add 'and of the plaintiff') 'from the time the libel was published down to the time they give their verdict. They may consider what his conduct has been before action, after action, and in court during the trial."

In the circumstances of the case and in the light of the authorities, it is my considered judgment that a fair and reasonable compensation should be in the region of $15,000 for full liability. This sum must, however, be reduced for reason of the plaintiff's own behaviour in the matter. The court, therefore, enters judgment for the plaintiff against the 3rd defendant in the sum of $9,000 by way of damages.

As regards costs I make a consent order to the effect that the plaintiff is to be awarded one third of the total. The court awards no costs to the defendants.

Order accordingly.

Solicitors: *Shearn Delamore & Co.; Shook Lin & Bok.*

WAN NORSIAH BINTI WAN ABDULLAH v. CHE HARUN BIN CHE DAUD

[O.C.J. (Mohamed Zahir J.) March 28, 1979]
[Kota Bharu — Civil Suit No. 12 of 1976]

Tort — Negligence — Road accident — Damages — Injured child discharged from hospital against medical advice — Bomoh treatment — Whether child should be penalised.

Damages — Personal injuries — Leg — Right femur — 1" shortening.

In this case on the facts the learned trial judge found that the defendant was wholly to be blamed for the accident. The plaintiff, who was a minor, was admitted to hospital but she was discharged from the hospital against medical advice and as a result suffered 1" shortening of her right lower limb.

Held: the plaintiff should not be penalised as she being a minor was not in a position to give consent for discharge from the hospital against medical advice. The damages awarded should not be reduced because she was discharged against medical advice.

Cases referred to:-

(1) *Wan Siew Luan* v. *Mohd. Ariffin* [1965] 1 M.L.J. xii.
(2) *Chua Kian Piow* v. *Pang Koh Soon & Anor.* [1965] 1 M.L.J. xii.
(3) *Yeo Kek Leng* v. *Ang Siong Teow* [1964] M.L.J. lviii.
(4) *Ho Ah Teng* v. *Kee Hee Joo* [1964] M.L.J. lviii.
(5) *McAuley* v. *London Transport Executive* (1957) 2 Ll. L. Rep. 500.
(6) *Yachuk* v. *Oliver Blais Co. Ltd.* [1949] A.C. 386.

CIVIL SUIT.

Mahmood bin Adam for the plaintiff.

Datuk H.L. Wrigglesworth for the defendant.

Cur. Adv. Vult.

Mohamed Zahir J.: The plaintiff, a minor, is suing through her next friend for damages arising from a motor accident occurred at Jalan Pengkalan Chepa on July 25, 1974.

The plaintiff in her statement of claim alleged that on that day she was standing on the side-table of the road near a bus stop when the defendant driving his car negligently knocked her down.

The defendant in his defence on the other hand pleaded that the accident was caused by the plaintiff while crossing or attempting to cross to the other side of the road without ascertaining or ensuring that it was safe to do so.

In her evidence the plaintiff alleged that on that fateful day she was waiting for a bus in order to go to school at Sekolah Rendah Kebangsaan Islah which is near the Court House here. She was with a number of friends and Norhayati binti Ibrahim (PW2) was one of them. The plaintiff gave evidence as to the accident in this manner:

"When the bus coming from the direction of Pengkalan Chepa appeared we tried to stop it but it did not stop. When the bus which failed to stop passed me, I turned my head and stared at the bus. While I was staring at the bus, I was knocked down and I guess by a car and I became unconscious. The car I guess came from the direction of Pengkalan Chepa. At the time when I was knocked down, I was standing on the side-table of the road."

She admitted that her house was on the other side of the road and she had to cross the road in order to go to the bus stop and to the place where she alleged she was knocked down.

PW2, Norhayati, the friend who was with her at the time of the accident, explained as to how the defendant's car went onto the grass verge and knocked down the plaintiff. She stated that the defendant's car, on passing another car, swerved to the edge of the road and knocked down the plaintiff. She said she saw the swerving.

PW3 who was at the material time cycling in order to go back to Kota Bharu stated he saw the two girls waiting for a bus. He also testified that the car that knocked down the plaintiff was trying to avoid another car coming from the opposite direction. The plaintiff was knocked down as she was standing on the edge of the tarred road.

The defendant in his evidence stated he was driving his car from Pengkalan Chepa towards Kota Bharu with one male Chinese, Teh Kok Keong (DW2), who was seated on his left. He saw many children near the school fence. A lorry was coming from the opposite direction. He slowed down. Then a girl crossed the road from behind the lorry from his right to the left and he saw her only after he passed the lorry and she was then already at the centre line, running. She was 14 feet away from him. He applied on the brakes and swerved to the left. He failed to avoid her and the off-side front bumper hit her. She was flung over the bonnet of the car and fell on his right rear side of the car.

DW2, the said Teh Kok Keong, testified that he saw a girl dash out from the right side of the road to the left. This is how he gave the evidence-in-chief: